

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

GREAT AMERICAN OPPORTUNITIES, INC.,)	
)	
)	
Plaintiff,)	
)	Case No. 3:17-cv-01022
vs.)	
)	
CHERRY BROTHERS, LLC d/b/a CHERRYDALE FARMS, RENE ULLOA, MATTHEW L. PARKIN, TODD ALLEN MILLS, REBECCA FRANCIS, and STEVEN B. CLONTS,)	JUDGE ALETA TRAUGER
)	
)	
Defendants.)	

**DEFENDANT MATTHEW PARKIN'S MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED COMPLAINT**

Comes now the Defendant, Matthew Parkin, by and through undersigned counsel, pursuant to Fed. R. Civ. P. 12, and respectfully moves the Court to dismiss Plaintiff's First Amended Complaint, and states as follows:

1. Plaintiff's First Amended Complaint arises, in part, from Mr. Parkin's departure from the employment of Plaintiff and his later work for Defendant Cherry Brothers LLC, d/b/a Cherrydale Farms ("Cherrydale").
2. Counts I and II of Plaintiff's Amended Complaint allege that Mr. Parkin violated the Defend Trade Secrets Act, 18 U.S.C. § 1836, *et seq.* ("DTSA") and the Tennessee Uniform Trade Secrets Act, Tenn. Code Ann. § 47-25-1701, *et seq.* ("TUTSA"). These allegations fail because Plaintiff has failed to identify any alleged trade secrets, how Mr. Parkin misappropriated

any alleged trade secrets, and has alleged no damage Plaintiff suffered because of such misappropriation. *See Wyndham Vacation Resorts, Inc. v. Timeshare Advocacy Intern., LLC*, 2013 WL 139204, at *4 (M.D. Tenn. Jan. 14, 2013) (laying out the elements of a TUTSA claim).

3. Count III of Plaintiff's First Amended Complaint alleges that Mr. Parkin violated his employment agreement with Plaintiff, specifically a covenant not to compete. (Docket Entry 51, ¶¶ 206-214) This claim fails because the covenant not to compete is unenforceable under Tennessee law. *See Murfreesboro Med. Clinic, P.A. v. Udom*, 166 S.W.3d 674, 678 (Tenn. 2005) (stating that reasonable territorial restrictions are a necessary component of an enforceable non-compete agreement).

4. Count V of Plaintiff's First Amended Complaint alleges that Mr. Parkin breached his fiduciary duty to Plaintiff by misappropriating Plaintiff's trade secrets. (Docket Entry 51, ¶¶ 222-227) This claim fails because once Mr. Parkin's employment with Plaintiff ended, so too did any fiduciary duty or duty of loyalty he owed to Plaintiff. *See, e.g. Midland-Ross Corp. v. Yokana*, 293 F.2d 411, 412 (3d Cir. 1961). And Count V is preempted by TUTSA because it arises out of the same set of operative facts as a misappropriation of trade secrets claim, and must be proven by the "same proof" as such a claim. *Hauck Mfg. Co. v. Astec Indust., Inc.*, 375 F.Supp.2d 649, 658 (E.D. Tenn. 2004).

5. Count VIII of Plaintiff's First Amended Complaint alleges that Mr. Parkin tortiously interfered with Plaintiff's business relations, but identifies no such relations with which Mr. Parkin has interfered, and alleges no damages Plaintiff has suffered. (Docket Entry 51, ¶¶ 240-246) Moreover, this claim is preempted by the Tennessee Uniform Trade Secrets Act, because it

arises out of the same set of operative facts as a misappropriation of trade secrets claim, and must be proven by the “same proof” as such a claim. *Hauck Mfg. Co.* 375 F.Supp.2d at 658.

6. Mr. Parkin’s Memorandum of Law is attached in support of this Motion and is incorporated herein by reference.

WHEREFORE, Mr. Parkin respectfully moves this Court to dismiss Plaintiff’s First Amended Complaint with prejudice as it relates to Counts I-III, V and VIII against him. Further, Mr. Parkin is entitled to an award of attorney’s fees under Tenn. Code Ann. § 47-25-1705(1) and 18 U.S.C. § 1836(b)(3)(D).

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion has been served via the Court's Electronic Filing System on:

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on this 2nd day of October, 2017.

/s/ Robert D. Martin
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